

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

REGION 2

HEINZ AVE., SUITE 200
BERKELEY, CA 94710-2737

April 30, 1996

N00217.003261
HUNTERS POINT
SSIC NO.5090.3



Engineer Field Activity, West
Attn Mr. Richard Powell [1832]
900 Commodore Drive
San Bruno California, 94066-5006

Dear Mr. Powell:

**IR-1/21 REMOVAL ACTION APPLICABLE OR RELEVANT AND APPROPRIATE
REQUIREMENTS (ARARs) HUNTERS POINT ANNEX**

The Department of Toxic Substances Control is forwarding the enclosed ARARs from the Department of Fish and Game. The ARARs should be incorporated in the IR-1/21 removal action.

Should you have any questions regarding this letter, please call me at (510) 540-3821.

Sincerely,

A handwritten signature in black ink that reads 'Cyrus Shabahari'.

Cyrus Shabahari
Project Manager
Office of Military Facilities

Enclosure

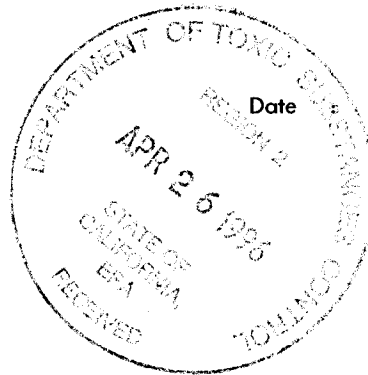
cc: US EPA, Region IX
Attn: Anna-Marie Cook
Mail Code H-9-2
75 Hawthorne Street
San Francisco, California 94105

Regional Water Quality Control Board
Attn: Richard Hiett
2101 Webster Street, Suite 500
Oakland, California 94612



Memorandum

Mr. Cyrus Shabahari
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710



Date April 19, 1996

From : Department of Fish and Game

Subject : Applicable or Relevant and Appropriate Requirements (ARARs) for Site IR-1/21 Removal Action, Parcel E, Hunters Point Annex (HPA), San Francisco, California

This is in response to your request for location specific ARARs for the subject site. The document proposes to construct a sheet piling cutoff wall to restrict contaminant flow to the bay.

We have not had the opportunity to do a site inspection at Parcel E, HPA. However, the material provided indicates the site has salt marsh areas and may have native vegetation and/or wildlife, including habitat for the endangered Salt Marsh Harvest Mouse. Listed on the enclosed table are the Fish and Game Code sections that are possible State location specific ARARs or "to be considered" (TBCs). The specific citation and explanation for each listed ARAR and TBC is included.

If you have any questions or need additional information, please contact Ms. Susan Ellis, Senior Biologist (Fisheries), 1701 Nimbus Rd., Suite C, Rancho Cordova, California 95760, telephone number (916) 358-2852.


John Turner, Chief
Environmental Services Division

Enclosure

cc: Department of Fish and Game
Sacramento

Ms. Susan Ellis, ESD

Jennifer Decker, LA

Dr. Michael Martin
Department of Fish and Game
Monterey

**LOCATION SPECIFIC ARARs FOR SITE IR - 1/21 REMOVAL ACTION PARCEL E,
HUNTERS POINT ANNEX (HPA), SAN FRANCISCO, CALIFORNIA**

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Aquatic habitat/species	Action must be taken if toxic materials are placed where they can enter waters of the State. There can be no releases that would have a deleterious effect on species of habitat.	Fish & Game Code Sections 5650 (a), (b) & (f)	<p>This code section prohibits the deposition into State waters of, <i>inter alia</i>, petroleum products [Section 5650 (a)], factory refuse [Section 5650(b)], and any substance deleterious to fish, plants or birds [Section 5650 (f)]. These are substantive promulgated environmental protection requirements. These requirements impose strict criminal liability on violators. [People v. Chevron Chemical Company (1983) 143 Cal. App.3d 50.]. This imposition of strict criminal liability imposes a standard that is more stringent than Federal law. The extent to which each subdivision of Section 5650 is relevant and appropriate depends on site specific conditions or details.</p> <p>There is also a scientific/technical reason for inclusion of Section 5650 as a potential location specific ARAR. State and Federal water quality control standards are generally developed utilizing data , information and guidance from numerous sources. Federal water quality criteria may allow higher concentrations of chemicals for limited time periods which can result in conditions which are deleterious to State fish, plants, or birds.</p>
Aquatic and wildlife species/ habitats	Action may be taken to collect damages for the taking of birds, mammals, fishes, reptiles or amphibians.	Fish and Game Code Section 2014	This code section declares that it is the policy of the state to conserve its natural resources. It allows the state to recover damages in a civil action against any person or local agency which unlawfully or negligently takes or destroys any bird, mammal, fish, reptile or amphibian protected by the laws of the state. This section should be included as an ARAR.

**LOCATION SPECIFIC ARARs FOR SITE IR - 1/21 REMOVAL ACTION PARCEL E,
HUNTERS POINT ANNEX (HPA), SAN FRANCISCO, CALIFORNIA**

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Rare native plants	Action must be taken to conserve native plants, there can be no releases and /or actions that would have a deleterious effect on species or habitat.	Fish & Game Code Sections 2080 and 1900 et seq.	These code sections make provisions concerning native plant protection, including: criteria for determining endangered plant species; designation of endangered plants by the Fish and Game Commission; research by the Dept.; takings by the Dept. for scientific propagation purposes; other prohibitions on takings; exercise of enforcement authority; arrests and confiscation; carrying out of plant conservation programs by other state departments and agencies; and unauthorized public agency regulations pertaining to agriculture. Sections 1900, 1901, 1904, 1905, 1906 1907, 1909, 1910, 1911, 1912, and 1913 are procedural and administrative in nature and do not impose any substantive requirements. Section 1908 imposes a substantive requirement for forbidding any "person" to take rare or endangered native plants. If rare or endangered plants are present, sections 2080 and 1908 should be included as ARARs and the other sections as TBCs.

Endangered Species	Action must be taken to conserve endangered species. There can be no releases and/or actions that would have a deleterious effect on species or habitat.	Fish & Game Code Sections 2080	This code section prohibits the taking, importation or sale of any species, or any part thereof, of an endangered species or a threatened species. This section should be included as an ARAR.
Endangered Species	Action must be taken to conserve endangered species, there can be no releases and /or actions that would have a deleterious effect on species or habitat.	Fish & Game Code Section 2090-2096	These code section comprise Article 4 of Chapter 1.5 of the California Endangered Species Act. These sections make provisions concerning Department coordination and consultation state and federal agencies and with project applicants. These sections do not impose substantive requirements. These sections should be included as TBCs

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HUNTERS POINT ANNEX (HPA), SAN FRANCISCO, CALIFORNIA**

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Wildlife species	Action must be taken to prohibit the taking of birds and mammals, including taking by poison.	Fish & Game Code sections 3005	<p>These code section prohibits the deposition into State waters of, inter alia, petroleum products [Section 5650 (a), factory refuse [Section 5650(b)], and any substance deleterious to fish, plants or birds [Section 5650 (f)]. These are substantive promulgated environmental protection requirements. These requirements impose strict criminal liability on violators. [People v. Chevron Chemical Company (1983) 143 Cal. App.3d 50.]. This imposition of strict criminal liability imposes a standard tat is more stringent than Federal law. The extent to which each subdivision of Section 5650 is relevant and appropriate depends on site specific conditions of details.</p> <p>There is also a scientific/technical reason for inclusion of Section 5650 as a pot location specific ARAR. State and Federal water quality control standards are generally developed, utilizing data , information and guidance from numerous sources. J Federal water quality criteria may allow higher concentrations of chemicals for limited time periods, which can result in conditions which are deleterious to State fish, plants, or birds.</p>
Wildlife species/habitats	Action must be taken for the general protection and conservation of fish and wildlife resources.	Fish & Game Code Section 1600	<p>This code section declares the protection and conservation of fish and wildlife to be an important public interest. This section is a general statement of policy that does not impose a substantive requirement. This section should be included as a TBC.</p>

**LOCATION SPECIFIC ARARs FOR SITE IR - 1/21 REMOVAL ACTION PARCEL E,
HUNTERS POINT ANNEX (HPA), SAN FRANCISCO, CALIFORNIA**

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Streambed	Any streambed may not be altered without first notifying the Department	Fish & Game Code Section 1603	This section requires notification to and action by the Department. Section 1603 also imposes a substantive requirement to the extent it requires streambed alteration to not substantially adversely affect an existing fish or wildlife resource. This section should be included as an ARAR.
Streambed	The Department must propose reasonable modifications to public construction projects that would alter the bed, channel or bank of lake and may substantially adversely affect an existing fish or wildlife resource.	Fish & Game Code Section 1601	This section requires notification to and action by the Department. It also imposes a substantive requirement to the extent it requires streambed alteration to not substantially adversely affect an existing fish or wildlife resource. The section is relevant to the extent the operations impact the beds, channel or bank of San Francisco Bay. Section 1601 complements the operation of federal ARAR 40 CFR section 231.1, which authorizes the USEPA Administrator to prohibit activity whenever he determines that the discharge of dredge or fill material may have an "unacceptable adverse affect" on fish and wildlife. Section 1601 also complements the operation of federal ARAR 16 USC section 662, which requires the determination of possible damage to wildlife resources and the means and measures that should be adopted to prevent the loss of or damage to such resources caused by proposed streambed alterations. This section should be included as an ARAR.